

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOHN R. SNERRIFF)

For Appellant: John R. Sherriff,
in pro. per.

For Respondent: Terry Collins
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of John R. Sherriff against a proposed assessment of additional personal income tax in the amount of \$190.40 for the year 1977.

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The question presented by this appeal is whether appellant has shown that he was entitled to his claimed charitable contribution deduction for 1977.

Appellant claimed charitable contribution deductions in the total amount of \$5,200, or approximately 30 percent of his adjusted gross income, on his 1977 personal income tax return. Of this amount, \$2,685 was cash given to the First Meridian Church, and \$2,500 represented the fair market value of a car given to that same entity. The First Meridian Church (FMC) is a "charter" of the Universal Life Church (ULC) of Modesto, California. Appellant is the pastor of FMC. Appellant submitted a letter from Clarence I. Johnson, secretary of FMC, stating that appellant had made the claimed contributions to FMC.

Respondent disallowed the claimed deductions because appellant had not substantiated FMC's eligibility as a recipient of tax-deductible contributions. A notice of proposed assessment was issued, and when appellant failed to provide additional requested information regarding FMC, respondent affirmed the assessment.

Under Revenue and Taxation Code section 17214, deductions are allowed for contributions or gifts paid in a taxable year to or for the use of:

(b) A corporation, or trust, or community chest, fund or foundation--

(1) Created or organized in the United States ... or under the law of ... any state ...;

(2) Organized and operated exclusively for religious ... purposes ...;

(3) No part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(4) Which is not disqualified for tax exemption under Section 23701d by reason of attempting to influence legislation.

The maximum allowable contribution deduction is equal to 20 percent of a taxpayer's adjusted gross income. (Rev. & Tax. Code, § 17215.)

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It is well settled that deductions are a matter of legislative grace and that the taxpayer must show that he is entitled to any claimed deduction. (See, e.g., New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 1348] (1934).) The taxpayer must be able to point to an applicable statute and show by credible evidence, rather than mere assertions, that his claimed deduction comes within the terms of that statute. (New Colonial Ice Co. v. Helvering, supra, 292 U.S. at 440; Appeal of Linn L. and Harriett E. Collins, Cal. St. Bd. of Equal., Nov. 18, 1980.)

Respondent contends that appellant's contributions are not deductible because the recipient is not an organization described in Revenue and Taxation Code section 17214 to which tax-deductible contributions may be made. It alleges that FMC was created as part of a widespread tax avoidance scheme in which contributions are made to a charter of ULC and the contributions are then used by the donors to pay their personal expenses. Therefore, respondent argues, this charter is not organized and operated exclusively for religious purposes and its net earnings inure to the benefit of a private individual. Revenue and Taxation Code section 17214 is substantially similar to Internal Revenue Code section 170(c). The United States Tax Court has used the similar requirements of Internal Revenue Code § 170(c) to disallow deductions for contributions to ULC charters in a number of recent cases. (See, e.g., Howard P. Harcourt, ¶ 82,621 P-H Memo. T.C. (1982); Richard A. Magin, ¶ 82,383 P-H Memo. T.C. (1982); William R. Hall, ¶ 82,337 P-H Memo. T.C. (1982); Roland Clifford Riemers, ¶ 81,456 P-H Memo. T.C. (1981).)

Appellant states that his contributions are tax deductible because ULC has received a tax exemption number and FMC is part of ULC. He has also submitted a letter from the secretary of FMC which, he contends, substantiates his contributions.

We find that appellant is not entitled to deduct the amount of his contributions to FMC. He cannot rely on ULC's tax exemption to establish FMC as a qualified recipient because ULC's exemption is not a group exemption covering its charters. (Roland Clifford Riemers, supra.) He states that FMC is a part of ULC. "But that incantation does not establish any such fact." (William R. Hall, supra.) He must, therefore, show that FMC independently meets the requirements of Revenue and Taxation Code section 17214. He has not presented one iota of evidence

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to show this and has not even denied any of respondent's allegations as to the structure and purpose of FMC. We find, therefore, that FMC was not a qualified recipient and that contributions to it are not tax-deductible. Having **found this**, the validity of the receipt for appellant's contributions is irrelevant.

For the reasons stated above, we must sustain respondent's action.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of John R. Sherriff against a proposed assessment of additional personal income tax in the amount of \$190.40 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day
of December , 1983, by the State Board of Equalization,
with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg
and Mr. Nevins present.

William M. Bennett, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr. , Member

Richard Nevins, Member

_____, Member